

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ERIC BURNETT,)	
)	
Petitioner/Defendant,)	
)	
vs.)	Civil No. 10-CV-164-JPG
)	
UNITED STATES OF AMERICA,)	Criminal No. 01-CR-40017-JPG
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

This matter comes before the Court on the Mandate of the Court of Appeals reversing the Court's denial of petitioner Eric Burnett's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 (Doc. 33). Pursuant to the Mandate, the Court **GRANTS** Burnett's § 2255 motion (Doc. 1) on the grounds that counsel provided constitutionally ineffective assistance of counsel by failing to consult with Burnett about filing a notice of appeal of his sentence revocation before the time to appeal had expired. *See Roe v. Flores-Ortega*, 528 U.S. 470 (2000). As a remedy, the Court **ORDERS** that Burnett shall be allowed to proceed now as if on direct appeal, with the assistance of counsel. *See Castellanos v. United States*, 26 F.3d 717, 720 (7th Cir. 1994).

The Court further:

- **DIRECTS** the Clerk of Court to enter judgment accordingly in this case;
- **VACATES** the March 17, 2009, judgment of revocation (Doc. 448) in Burnett's criminal case (Case No. 01-cr-40017);
- **DIRECTS** the Courtroom Deputy to prepare and file an amended judgment of revocation in Burnett's criminal case (Case No. 01-cr-40017) substantively identical to the original judgment of revocation (Doc. 448);
- **DIRECTS** the Clerk of Court to file a notice of appeal in Burnett's criminal case (Case No. 01-cr-40017) within 14 days of entry of the amended judgment, and to include the

judgment in this § 2255 case as part of the short record on appeal in Burnett's criminal case (Case No. 01-cr-40017); and

- **ORDERS** that Burnett's current counsel continue to represent Burnett through the filing of the appeal in his criminal case. Counsel may request withdrawal from the Court of Appeals, if appropriate.

IT IS SO ORDERED.

DATED: April 5, 2012

s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. DISTRICT JUDGE